A-5914 (a) & (b) a) Special Permit & b) Variance

To replace an existing stockade fence that:

- a) measures six (6) feet in height in the Grafton Street public right-of-way and
- b) measures six (6) feet in height forward of the front building restriction line

with a wood fence in the same location and at the same heights.

Laura M. Billings & David A. O'Neil 5803 Kirkside Drive

5803 Kirkside Drive



Figure 1: View of 5803 Kirkside Drive.



Figure 2: View looking east from 128 Grafton Street towards 5803 Kirkside Drive fence to be replaced.

CHEVY CHASE VILLAGE NOTICE OF PUBLIC HEARING

Please take notice that the Chevy Chase Village Board of Managers will hold a public hearing on the 16th day of May, 2011 at 7:30 p.m. The hearing will be held at the Chevy Chase Village Hall at 5906 Connecticut Avenue in Chevy Chase, Maryland.

APPEAL NUMBER A-5914 (a) & (b)
LAURA M. BILLINGS &
DAVID A. O'NEIL
5803 KIRKSIDE DRIVE
CHEVY CHASE, MARYLAND 20815

The applicants seek a special permit and a variance from the Board of Managers pursuant to Section 8-11 of the Chevy Chase Village Building Code to replace an existing stockade fence that:

- a) measures six (6) feet in height in the Grafton Street public right-of-way and
- b) measures six (6) feet in height forward of the front building restriction line with a wood fence in the same location and at the same heights.

(a) Special Permit:

The Chevy Chase Village Code § 8-31 (b)(1) states:

No fence, wall or hedge shall exceed 48 inches in height.

The Chevy Chase Village Code § 8-31 (c) states:

Except as provided in Section 31-(b), no structures, play equipment, fence, wall, tree, hedge or shrubbery, or any growth, shall be permitted on public property devoted to private use without a special permit from the Board of Managers.

(b) Variance

The Chevy Chase Village Code § 8-22 (f) states:

No person shall construct any fence or wall which exceeds forty-eight (48) inches in height at any location between the front lot line and the front building restriction line.

Additional information regarding this appeal may be obtained at the Chevy Chase Village Office between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday, may be viewed on the Village website at www.chevychasevillagemd.gov or you may contact the office for this information to be mailed to you.

This notice was mailed to abutting property owners on the 6th day of May, 2011.

Chevy Chase Village Office 5906 Connecticut Avenue Chevy Chase, Maryland 20815 301-654-7300

MAILING LIST FOR APPEAL A-5914 (A) & (B)

MS. LAURA M. BILLINGS & MR. DAVID A. O'NEIL 5803 KIRKSIDE DRIVE CHEVY CHASE, MD 20815

| Adjoining and confronting property owners Ms. Pamela Raymont-Simpson & Mr. & Mrs. Michael L. Denger | | |
|--|----------------------------|--|
| Mr. Charles Simpson | Or Current Resident | |
| Or Current Resident | 5802 Kirkside Drive | |
| 125 Grafton Street | Chevy Chase, MD 20815 | |
| Chevy Chase, MD 20815 | 20013 | |
| Mr. & Mrs. Robert Maruszewski | Ms. Jayne Shister & | |
| Or Current Resident | Mr. Philip Webre | |
| 127 Grafton Street | Or Current Resident | |
| Chevy Chase, MD 20815 | 5800 Kirkside Drive | |
| | Chevy Chase, MD 20815 | |
| Ms. Martha Kendrick & | Mr. & Mrs. Bradford J. May | |
| Mr. Harry Kettmer | Or Current Resident | |
| Or Current Resident | 5801 Kirkside Drive | |
| 128 Grafton Street | Chevy Chase, MD 20815 | |
| Chevy Chase, MD 20815 | | |

I hereby certify that a public notice was mailed to the aforementioned property owners on the 6th day of May, 2011.

Ellen Sands, Permitting & Code Enforcement Coordinator Chevy Chase Village 5906 Connecticut Avenue Chevy Chase, MD 20815



May 6, 2011

Ms. Laura M. Billings & Mr. David A. O'Neil 5803 Kirkside Drive Chevy Chase, MD 20815

Dear Ms. Billings & Mr. O'Neil:

Please note that your request to replace the fence located in your front (east) yard is scheduled before the Board of Managers on Monday, May 16, 2011 at 7:30 p.m.

Either you or a representative must be in attendance to present your case. At that time, additional documents may be introduced and testimony can be provided in support of your request.

For your convenience, enclosed please find copies of the Public Hearing Notice and mailing list. Please contact the Village office in advance if you are unable to attend.

Sincerely,

Ellen Sands

Permitting & Code Enforcement Coordinator

Chevy Chase Village

Enclosures

www.chevychasevillagemd.gov

Chevy Chase Village

Building Permit Application for Forces & Wells

for Fences & Walls Permit No: 5914 a & b Property Address: 5803 Kirkside Drive, Chevy Chase, MD 20815 Resident Name: Laura Billings & David O'Neil Daytime telephone: 202-626-5807 / 202-514-3712 Cell phone: After-hours telephone: 301-654-1970 E-mail: lbillings@milchev.com / david.o'neil@usdoj.gov **Primary Contact for Project:** Resident Architect Project Manager Contractor* *MHIC/MD Contractor's License No. (required): **Contractor Contact Information:** Name: Chris Bucca Business: Long Fence, 1910 Betson Court, Odenton, MD Daytime telephone: 301-261-3444 After-hours telephone: 301-908-4129 Fax: E-mail: **Description of Fence or Wall Project:** This permit request regards an old wooden stockade fence along the entire rear property line. The fence is in disrepair with many missing planks. We seek to replace this fence in the same location with the same material. Check appropriate box: Fence or wall to be constructed is: (1) new, (2) an enlargement of an existing fence or wall, or (3) replacing an existing fence or wall with one of a different kind. Fence or wall to be constructed is replacing an existing fence or wall with the same kind and in the same location. Parking Compliance: Is adequate on-site parking available for the construction crews? If no, please attach a parking plan which minimizes inconvenience to neighboring residents, and indicate if the property is in a permit parking area. Will road closings be required due to deliveries, equipment or other reasons?

Yes

Date permit issued:

To be completed by Village staff:

Is this property within the historic district?

Date application filed with Village:

Expiration date:

Guidelines for Building, Replacing and Maintaining Fences and Walls

Sec. 8-22 of the Village Code regulates fences and walls. To repair or maintain an existing fence or wall, the Village does not require a building permit. To install or replace a fence or wall, however, residents will need a Village building permit. (A building permit may also be required from Montgomery County, including the Historic Preservation Commission if the property is within the Historic District). Village Code allows fences and walls to be installed on a resident's property lines, inside the property lines on private property, and sometimes in the public right-of-way.

When placed on the property lines or on private property, the Village Code regulates fence and wall heights in two ways:

- 1. Fences and walls installed on private property anywhere between the property line and the front building restriction line may not exceed four feet (4') in height.
- 2. Fences and walls installed to the rear of the front building restriction line (that is, along the side and rear property lines or in the side and rear yards) may not exceed six and one half feet $(6\frac{1}{2})$ in height.

When measuring the height of a fence or wall, the Village Code provides that the "measurement shall be made from the surface of the ground of the lower yard next to the fence or wall" to the highest point of the fence or wall (such as the top of the posts, caps, decorative lattice, finials, etc.). For example, if a fence post is $6\frac{1}{2}$ feet high, then a cap on that post would exceed the height limit.

Walls can sometimes change the flow of water on a property. In such cases, residents or contractors will need to include a drainage plan with the building application.

When installing a fence or wall in the Village's public right-of-way, in addition to obtaining a Village Building Permit, residents must sign a **License to Use the Public Right-of-Way**, which will be recorded with your deed (please contact the Village office for more information). Fences and walls installed in the Village's rights-of-way may not exceed four feet (4') in height. Fences in the Village's rights-of-way must be installed at least two feet (2') from the public sidewalk, or where there is no sidewalk, at least five feet (5') from the curb or nearest edge of the paved roadway. Walls in the Village's public rights-of-way must be installed at least three feet (3') from the public sidewalk, or where there is no sidewalk, six feet (6') from the curb or nearest edge of the paved roadway. The Village office will not be issue permits for any fences or walls that block necessary sight lines at intersections or otherwise create a dangerous condition.

For all Village Code requirements, please see to Sections 8-4, 8-22, and 8-31.

Building Permit Application for Fences and/or Walls:

Filing Requirements

Application will not be reviewed until the application is complete

Village permits will not be issued until all county permits have been issued

| [| Copy of stamped drawings approved by Montgomery Co. Dept. of Permitting Services (DPS) and the Historic Preservation Commission (HPC), if required. Every page of drawings must be clearly stamped. |
|----|--|
| [| This application form, signed by resident. |
| [| Boundary Survey or Plat |
| [| Site Plan (see: Village Site Plan Checklist to ensure completeness) |
| | Building plans and specifications |
| MA | Tree Preservation Plan requested of Village arborist (see: Village Tree Inspection Request form). All required tree protections must be fully installed before any work begins. |
| [| Filing Fee (due at time of application). Fee schedule is listed in Chapter 6 of the Village Code. |
| [| Damage deposit or performance bond (due when permit is issued). Amount will be set by Village Manager |
| | Once this permit application is complete, the Village Manager will review the application and accompanying documents and, under most circumstances, act on the application within 5 to 10 working days. If the Montgomery County permit is suspended, revoked or lapsed, the Village permit is automatically suspended, revoked or lapsed. No signs advertising any service provider may be posted on the work site. |
| | |
| | I hereby certify that I have the authority to make the foregoing application, that the application is correct, that I have read and understood all requirements and that the construction will conform to the regulations of the Montgomery County Zoning Code, the Village Code including Urban Forest code, and any covenants and easements on the subject property. Applicant's Signature: Date: |
| | |

| For Use By Village Manager | Application approved with the following conditions: | |
|--|---|----|
| | | |
| APR 2 2 2001 Chevy Chase Village Manager | Application denied for the following reasons: | |
| Filing Fees (due when application submitted) Permit Application Fee: \$30.00 (if fence or wall is new, enlarged or replaced with different kind) \$15.00 (if fence or wall is being replaced in-kind and in the same location) \$50.00 (additional fee if construction is in the Right-Of-Way) Tree Preservation Plan Fee: \$250.00 Not required for this project | | e. |
| TOTAL Fees: \$ 30 . 00 | Date: 4/22/11 Staff Signature: Wendand | |
| Damage Deposit/Performance Bond | Date: Staff Signature: | |

Chevy Chase Village

Application for a Special Permit

Chevy Chase Village Code Section 8-1(aa) defines a Special Permit as permission granted by the Board of Managers in accordance with Article II Division B of this Chapter [8], to construct, install, remove or alter a structure or planting, or take other action where such permission is required by this Chapter.

| Subject Property: 5803 Kirkside Drive | | | |
|---|--|--|--|
| | | | |
| Describe the Proposed Project: Replace an existing, dilapidated, and partially non-conforming fence along the rear property line. | | | |
| Applicant Name(s) (List all property owners): Laura Billings & David O'Neil | | | |
| Daytime telephone: 202-626-5807 / 202-514-3712 Cell: 917-359-0949 / 202-305-5038 | | | |
| E-mail: lbillings@milchev.com / daveoneil0505@yahoo.com | | | |
| Address (if different from property address): | | | |
| For Village staff use: Date this form received: 40511 Special Permit No: A - 5914(A) | | | |
| Filing Requirements: Application will not be accepted or reviewed until the application is complete Completed Chevy Chase Village Application for a Special Permit (this form) Completed Chevy Chase Village Building Permit Application A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces. Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of al structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above. Copy of Covenants, except for special permits authorized by Sections 8-22, 8-26 or Article IV of Chapter 8 of the Chevy Chase Village Code. If there are no covenants, provide a letter from an attorney or the title insurance carrier stating that there are no covenants. Applicable special permit fee listed in Chapter 6 of the Village Code. | | | |
| Affidavit I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designed and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this special permit request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forting in the foregoing application are true and correct to the best of my knowledge, information and belief. Applicant's Signature: Date: Date: 1/25/11 | | | |

| Describe the basis for the special pern | nit request (attach additional p | ages as needed): |
|--|---|---|
| Describe the reasons why approval of the sp welfare or the reasonable use of adjoining pr Please see attached | necial permit would not adversely roperties: | y affect the public health, safety or |
| THE RESERVE TO THE RE | | |
| | | |
| | | |
| Describe the reasons why the special perpurpose of Chapter 8 of the Chevy Chase Vi | mit can be granted without su illage Code, entitled <i>Buildings a</i> | bstantial impairment of the intent and nd Building Regulations: |
| Please see attached | | |
| | | |
| | | |
| In exercising its powers in connection with may reverse or affirm, wholly or partly, or appropriate. Special Permit Filing Fees | a special permit request, the Cir may modify the requirement, Checks Payable To: | Chevy Chase Village 5906 Connecticut Ave. |
| Per Village Code Sec. 6-2(a)(24): | | Chevy Chase, MD 20815 |
| \$300.00 for new construction. \$150.00 for replacing existing non-conformities. | 150.00 for replacing existing non- primities. | |
| \$2,250.00 for demolition of main building. | Staff Signature: Mundal | |
| \$300.00 for demolition of accessory building or structure. | | |
| \$300.00 for fences, walls, play equipment, trees, hedges, shrubbery in the | | |
| public right-of-way. | | |
| Fee Paid: | | |

Describe the basis for the special permit request.

Describe the reasons why approval of the special permit would not adversely affect the public health, safety or welfare, or the reasonable use of adjoining properties:

The approval of the special permit request would have minimal effect because we are seeking only to replace an existing fence in all respects, including material and size. In any event, should there be a perceptible effect, it would be of a positive, not adverse, nature. The current fence is dilapidated and broken in many sections. Therefore, replacing the fence would not only enhance the overall appearance of the properties it abuts, it would decrease the likelihood that someone may hurt himself on broken wood or protruding nails.

Describe the reasons why the special permit can be granted without substantial impairment of the intent and purpose of Chapter 8 of the Chevy Chase Village Code, entitled "Buildings and Building Regulations:"

According to Sec. 8-11(b) of the Chevy Chase Village Code, "a special permit may be granted by the Board of Managers only if it finds" that three requirements are met:

- 1. First, the Board of Managers must determine that "[t]he proposed special permit would not adversely affect the public health, safety or welfare, nor the reasonable use of adjoining properties." (Sec. 8-11(b)(1)). Please see the foregoing answer regarding why public health, safety or welfare, nor the reasonable use of adjoining properties would be negatively affected.
- 2. Second, granting of the permit request may not "substantial[ly] impair[]... the intent and purpose of this chapter." (Sec. 8-11(b)(2)). The Chevy Chase Village Code does not explicitly state the purpose of Chapter 8. However, assuming that Chapter 8 codifies locally accepted standards of beauty and propriety in residential land use, approval of this request would not impair the Chapter's intent. The existing fence has stood for many years, and its presence has not frustrated the aim or purpose of Chapter 8. Replacing the fence would change only its broken-down appearance, thus enhancing the use of the property.
- 3. Third, Sec. 8-11(b)(3) states that special permits must not "violate any covenant applicable to the property," "except for special permits authorized by Sections 8-22, 8-26 or Article IV." In this case, approval of the special permit would replace an existing structure as described under 8-22(g), and is therefore excepted by this provision.

Chevy Chase Village

Application for a Variance

A variance is permission granted to a landowner to depart from the specific requirements of the Village zoning ordinance and allows a landowner to use land differently than specified in the ordinance. The variance is a written authorization from the Board of Managers permitting construction in a manner not otherwise allowed by the Village Code.

| Subject Property: 5803 Kirkside Drive | | |
|--|--|--|
| Describe the Proposed Project: Replace an existing, dilapidated, and partially non-conforming fence along the rear property line. | | |
| Applicant Name(s) (List all property owners): Laura Billings & David O'Neil | | |
| Daytime telephone: 202-626-5807 / 202-514-3712 | | |
| E-mail: lbillings@milchev.com / daveoneil0505@yahoo.com | | |
| Address (if different from property address): | | |
| | | |
| For Village staff use: Date this form received: 425/22 Variance No: A-5914(b) | | |
| | | |

Filing Requirements:

| _/ | Application will not be accepted or reviewed until the application is complete | | |
|----|--|--|--|
| M | Completed <i>Chevy Chase Village Application for a Variance</i> (this form) | | |
| | Completed Chevy Chase Village Building Permit Application | | |
| | A boundary survey or plat diagram with a margin of error of one tenth of a foot or less showing all existing structures, projections and impervious surfaces. | | |
| | Surveys, plats, engineering reports, construction plans/specifications or other accurate drawings showing boundaries, dimensions, and area of the property, as well as the location and dimensions of all structures/fences/walls/etc., existing and proposed to be erected, and the distances of such structures/fences/walls/etc., from the nearest property lines. These drawings shall incorporate and display reference dimensions from the boundary survey or plat diagram required above. | | |
| | Copy of Covenants applicable to the property except for variances from Sections 8-22, 8-26 or Article IV of Chapter 8 of the Chevy Chase Village Code. If there are no covenants, provide a letter from an attorney or the title insurance carrier stating that there are no covenants. | | |
| | Variance fee (See fee schedule listed in Chapter 6 of the Village Code). | | |

Affidavit

I hereby certify that I have the authority to submit the foregoing application, that all owners of the property have signed below, that I have read and understand all requirements and that I or an authorized representative will appear at the scheduled public hearing in this matter. I hereby authorize the Village Manager, or the Manager's designee, and/or the Board of Managers to enter onto the subject property for the purposes of assessing the site in relation to this variance request. I hereby declare and affirm, under penalty of perjury, that all matters and facts set forth in the foregoing application are true and correct to the best of my knowledge, information and belief.

Applicant's Signature:

Applicant's Signature:

Date: 4/25/11

Date: 4/25/11

Describe the basis for the variance request (attach additional pages as needed). Describe the special conditions of the property (e.g., odd shape, small size, sloping topography, abuts state highway, etc.) and how the property compares to other properties in the Village: Please see attached Describe how enforcement of the building regulations would result in an unwarranted hardship and injustice because of the special condition(s) described above (i.e., describe (i) the unwarranted hardship and injustice that you claim exists and (ii) how the special conditions cause that unwarranted hardship and injustice): Describe how the proposed variance most nearly accomplishes the intent and purpose of the requirements of Chapter 8 of the Chevy Chase Village Code, entitled Buildings and Building Regulations: In exercising its powers in connection with a variance request, the Chevy Chase Village Board of Managers may reverse or affirm, wholly or partly, or may modify the requirement, decision or determination as it deems appropriate. Variance Checks Payable To: **Chevy Chase Village** Filing Fee 5906 Connecticut Ave. Chevy Chase, MD 20815 Per Village Code Sec. 6-2(a)(24): \$300.00 for new construction. Date Paid: 47 \$150.00 for replacing existing non-Staff Signature: conformities.

\$300.00 for fences, walls, play

public right-of-way. Other: \$____

Fee Paid:

equipment, trees, hedges, shrubbery in the

Describe the basis for the variance request.

Describe the special conditions of the property (e.g., odd shape, small size, sloping topography, abuts state highways, etc.) and how the property compares to other properties in the Village:

The request for a variance concerns our application to replace an existing back fence that it is in poor condition. Most Village homeowners would not need to seek a variance to replace a back fence. Our property, however, is a corner lot, and our back fence runs perpendicular from Grafton Street and along the side yard of our neighbors on Grafton Street. Moreover, our back fence is partially in the Village right-of-way as well as forward of the front building line on Grafton Street.

Describe how enforcement of the building regulations would result in an unwarranted hardship and injustice because of the special conditions described above (i.e., describe (i) the unwarranted hardship and injustice that you claims exists and (ii) how the special conditions cause that unwarranted hardship and injustice):

If we are not permitted to replace the fence, we would maintain the existing one, which is in disrepair, visually unappealing, and potentially dangerous because of the broken wood and protruding nails. That would be an unfortunate result for everyone, and it would be unjust because most property owners are able to erect, maintain, and replace back fences as needed, so long as they are consistent with the Code regulations.

Describe how the proposed variance most nearly accomplishes the intent and purpose of the requirements of Chapter 8 of the Chevy Chase Village Code, entitled "Buildings and Building Regulations:"

According to Sec. 8-11(c) of the Chevy Chase Village Code, "a variance may be granted by the Board of Managers only if it finds" that three requirements are met:

- 1. First, "[t]he proposed variance is required because special conditions exist whereby the enforcement of the requirements of this Chapter would result in unwarranted hardship and injustice to the owner." (Sec. 8-11(c)(1)). Please see the foregoing answer regarding why a variance would prevent hardship and injustice.
- 2. Second, "the proposed variance would most nearly accomplish the intent and purpose of the requirements of this Chapter." (Sec. 8-11(c)(2)). The Chevy Chase Village Code does not explicitly state the purpose of Chapter 8. However, assuming that Chapter 8 codifies locally accepted standards of beauty and propriety in residential land use, approval of this request would not impair the Chapter's intent. The existing fence has stood for many decades, and its presence has not frustrated the aim or purpose of Chapter 8. Replacing the fence would change only its broken-down appearance, thus enhancing the use of the property.

3. Third, Sec. 8-11(c)(3) states that "the proposed variance would not violate any covenant applicable to the property," "except for variances from the requirements of Sections 8-22, 8-26 or Article IV." In this case, approval of the variance would replace an existing structure as described under 8-22(g), and is therefore excepted by this provision.



DEPARTMENT OF PERMITTING SERVICES

Isiah Leggett
County Executive



Jennifer Hughes Acting Director

FENCE PERMIT

Issue Date:

4/15/2011

Permit No:

565993

Expires:

4/15/2012

X Ref.

Rev. No:

ID:

AC1118005

THIS IS TO CERTIFY THAT:

LAURA BILLINGS 5803 KIRKSIDE DRIVE CHEVY CHASE MD 20815

HAS PERMISSION TO:

CONSTRUCT

FENCE

Feet

Inches in height

PROPERTY LINE

OWNERS LAND

N

RIGHT OF WAY

N

PERMIT CONDITIONS:

FENCE 3FT 6IN ALSO REPLACE BACK FENCE 6FT ENCLOSE THE YARD

PREMISE ADDRESS:

5803 KIRKSIDE DR

TAX ACCOUNT NO.

CHEVY CHASE MD 20815-7119

LOT

1

BLOCK

14

ZONE

GRID

LIBER FOLIO ELECTION DISTRICT

PLATE

PARCEL

PERMIT FEE:

\$51.70

SUBDIVISION

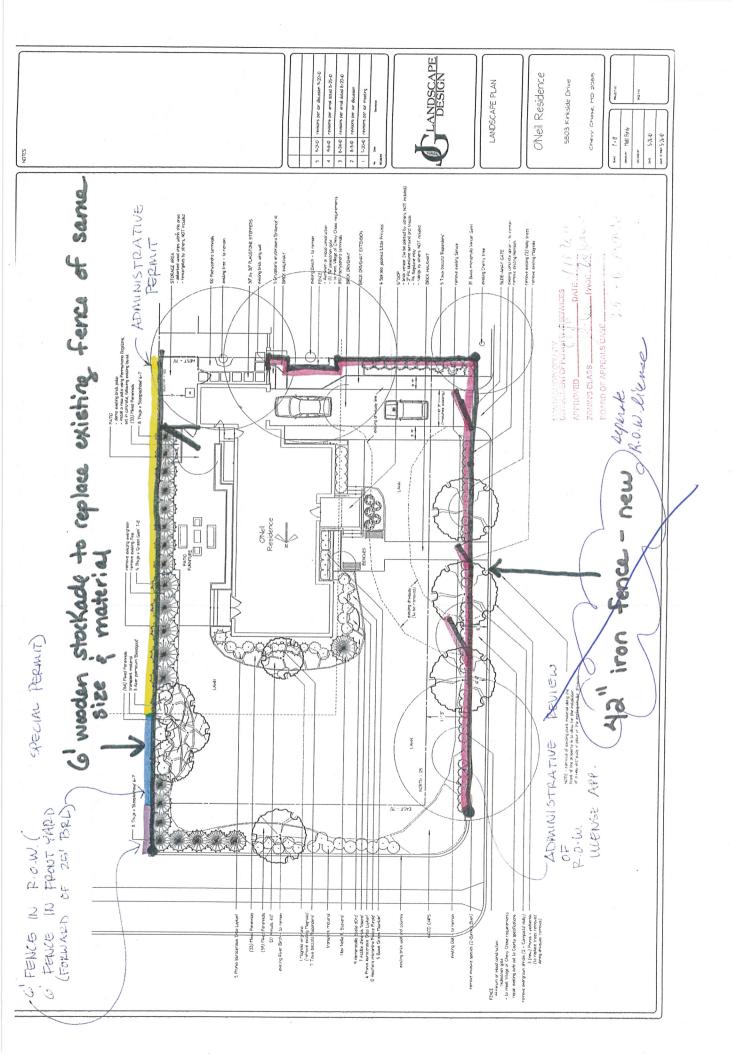
CHEVY CHASE SEC 1-A

PS NUMBER

MUST BE POSTED ON JOB SITE

Acting Director, Department of Permitting Services

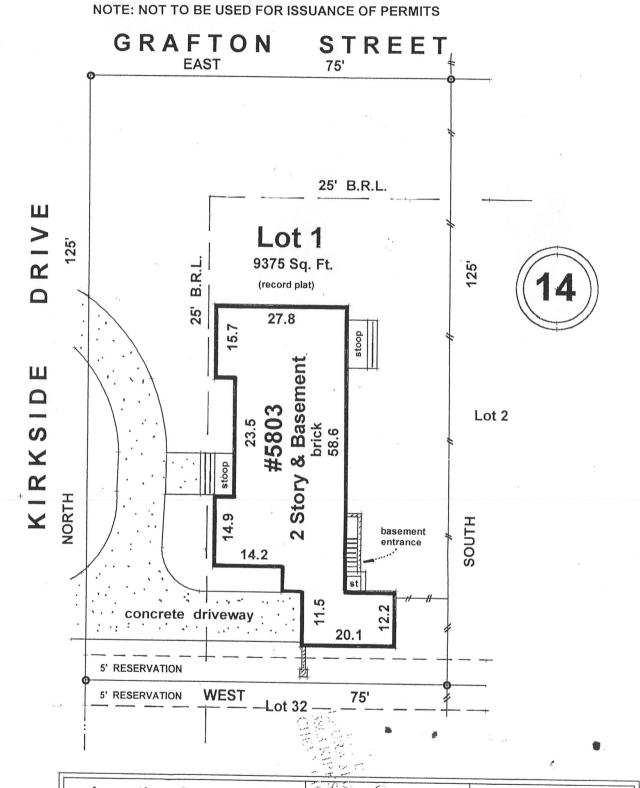
Phone: (240) 777-6370



Landtech Associates Inc. 10260 Old Columbia Road Rivers Center-Suite J

Columbia, MD 21046

Phone: 410-290-8099 Fax: 410-290-8299





| | Location Survey of: | LOT: 1 | BLOCK: 14 |
|-------------|----------------------|----------------|-----------------|
| | #5803 Kirkside Drive | PLATBR: 4 | PLAT#: 349 |
| | Section 1-A | DATE: 11-30-09 | SCALE: 1" = 20' |
| Chevy Chase | CASE NUMBER: | 091533-PM | |
| | Montgomery Co., MD | FILE NUMBER: | LT-2092097 |